

1 Timothy J. Conway, WSBA 52204
2 Direct Dial: 503.802.2027
3 Facsimile: 503.274.8779
4 E-Mail: tim.conway@tonkon.com
5 TONKON TORP LLP
6 888 SW Fifth Avenue, Suite 1600
7 Portland, OR 97204-2099

8
9 Attorneys for Karen L. Easterday,
10 individually and as personal representative of
11 the Estate of Gale A. Easterday

HONORABLE WHITMAN L. HOLT

Hearing Date: December 21, 2021
Hearing Time: 11:00 a.m.
Location: Telephonic
Telephone Number: 877-402-9757
Telephonic Access Code: 7036041

12 UNITED STATES BANKRUPTCY COURT
13 EASTERN DISTRICT OF WASHINGTON

14 In re
15 EASTERDAY RANCHES, INC., *et al.*
16 Debtors¹.

Chapter 11
Lead Case No. 21-00141-WLH
Jointly Administered

17 EASTERDAY RANCHES, INC. and
18 EASTERDAY FARMS,
19 Plaintiffs,
20 v.
21 ESTATE OF GALE A. EASTERDAY
(DECEASED), KAREN L. EASTERDAY,
22 CODY A. EASTERDAY, and DEBBY
23 EASTERDAY,
24 Defendants.

Adv. Pro No. 21-80050 (WLH)
**NOTICE AND MOTION FOR
RECONSIDERATION**

25
26 ¹ This case is jointly administered with *In re Easterday Farms*, Case No. 21-00176-WLH11.

NOTICE AND MOTION FOR RECONSIDERATION - 1

1 ESTATE OF GALE A. EASTERDAY
2 (DECEASED), KAREN L. EASTERDAY, CODY
3 A. EASTERDAY, and DEBBY EASTERDAY,

4 Counterclaim Plaintiffs,

5 v.

6 EASTERDAY RANCHES, INC., EASTERDAY
7 FARMS,

8 Counterclaim Defendants.

9 MOTION

10 Karen Easterday, individually and as the personal representative of the estate
11 of Gale A. Easterday (“Mrs. Easterday”) moves for reconsideration of the court’s
12 scheduling order [adv. pro. doc. no. 22] (the “Scheduling Order”). Mrs. Easterday
13 believes the court may not have fully understood or appreciated the lack of
14 discovery to date on the issues involved in this Adversary Proceeding when ruling
15 on the Scheduling Order. Mrs. Easterday submits that a fair trial cannot occur
16 without a more reasonable schedule.

17 INTRODUCTION

18 Mrs. Easterday requests that the court reconsider the discovery timeline and
19 trial date in the above-captioned Adversary Proceeding as set out in the Scheduling
20 Order. In stating its rationale for entering the Scheduling Order, it appears that the
21 Court was under the misapprehension that extensive discovery had already
22 occurred in the Adversary Proceeding. That is not correct. At the hearing on
23 December 2, 2021, the court stated that the issues involved in the Adversary
24 Proceeding “have already been the subject of some relatively extensive discovery”
25 and that “we are not starting at zero here” [main case doc. no. 1293, minutes
26 35:26-35:30, 35:34-35:37]. The court further stated that “there are many months
left to get it completed and done” [main case doc. no. 1293, minutes 35:37-35:43].

NOTICE AND MOTION FOR RECONSIDERATION - 2

1 Unfortunately, those statements do not reflect an accurate understanding of the
2 facts. While extensive discovery has occurred in the main bankruptcy case as to
3 assets owned individually by the Easterdays that were not part of the sale process,
4 very little discovery has occurred with respect to the Sale Properties and no
5 discovery has occurred with respect to the allocation of net proceeds of the assets
6 that are at issue in the Adversary Proceeding. In turn, the Scheduling Order does
7 not provide adequate time for the necessary discovery to occur and for a fair trial to
8 take place, deprives Mrs. Easterday of her Fifth Amendment due process rights,
9 and risks stripping her of millions of dollars of property value.

10 The Scheduling Order's accelerated timeline is also problematic because the
11 outcome of the Adversary Proceeding is at the heart of Debtors' bankruptcy plan:
12 Debtors' success in the Adversary Proceeding is the foundation upon which its
13 proposed plan is based. As such, this process should not be unnecessarily fast-
14 tracked.

15 **BACKGROUND**

16 As the court is well aware, significant real property, along with
17 improvements thereon and water rights appurtenant thereto, were sold (the "Sale
18 Properties") on or about July 30, 2021 to Farmland Reserve (the "Sale"). To
19 maximize the value of the Sale Properties, the Easterday family agreed that
20 property personally owned by them could be sold, along with Debtors' property,
21 with the understanding that the net sale proceeds would later be allocated among
22 each of the Debtors and the Easterday family. This understanding was
23 memorialized in a Cooperation Agreement prior to the Sale, which was approved
24 by the court [main case doc. no. 640]. The Cooperation Agreement expressly
25 recognized that the Easterday family personally owned portions of Cox Farm and
26 River Farm, and all of Goose Gap Farm. Pursuant to the Cooperation Agreement,

NOTICE AND MOTION FOR RECONSIDERATION - 3

1 Debtors and the Easterday Family were to stipulate to the allocation of the net
2 proceeds from the Sale or, to the extent there was a dispute about the allocation of
3 the net proceeds from the Sale, negotiate in good faith and attempt to reach
4 agreement on a timely basis on a protocol for resolving such disputes. *Id.*
5 at sections 3 and 4.

6 Notwithstanding the terms of the Cooperation Agreement, the parties have
7 not stipulated to allocation of the net proceeds and not yet negotiated in good faith
8 to reach agreement on a protocol for resolving disputes concerning the allocation
9 of proceeds from the Sale. Instead, on or about September 22, 2021, Debtors filed
10 an adversary complaint against Mrs. Easterday (and other family members)
11 seeking a determination that Debtors owned all of the Sale Properties and are
12 entitled to all of the net sale proceeds (the “Complaint”) [adv. pro. doc. no. 1]. The
13 Complaint was shortly thereafter put on hold. On November 3, 2021, Debtors
14 demanded an answer by the Easterdays [adv. pro. doc. no. 11]. On November 17,
15 2021, Mrs. Easterday filed an answer and counterclaims to the Complaint
16 (“Answer and Counterclaims”) [adv. pro. doc. no. 14], disputing Debtors’ position,
17 and counterclaimed for a full determination of all property rights and interests by,
18 between, and among all stakeholders.

19 As of the date the Cooperation Agreement was approved, as of the date the
20 Sale took place, as of the date the Complaint was filed, as of the date
21 Mrs. Easterday’s Answer and Counterclaims were filed, and as of the December 2,
22 2021 status conference, the parties had not undertaken significant discovery as to
23 who owned any given parcel of the Sale Properties or the independent value of
24 those parcels, the water rights, or the improvements. Based on the court’s apparent
25 misunderstanding that extensive discovery on these issues had already occurred, it
26 entered the Scheduling Order.

NOTICE AND MOTION FOR RECONSIDERATION - 4

LEGAL ARGUMENT

A. The Court Must Correct a Clear Error to Prevent Manifest Injustice

A motion for reconsideration should be granted when doing so is necessary to “correct a clear error or prevent manifest injustice.” *Pyramid Lake Paiute Tribe of Indians v. Hodel*, 882 F.2d 364, 369 n.5 (9th Cir. 1989) (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4478 at 790); *see also In re River Park Square Project Bond Litigation*, No. CS0-1-0127-EFS, 2003 WL 27387027, at *1 (E.D. WA Jan. 1, 2003) (“Courts have generally recognized only four possible grounds for reconsideration: (1) evidence in the record clearly establishes a manifest error of law or fact on which the judgment was based, (2) newly discovered evidence that was previously unavailable, (3) prevention of manifest injustice, and (4) an intervening change in controlling law.”)

“Clear error or manifest injustice occurs where the Court ‘has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension.’” *Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1292–93 (S.D. Fla. 2012) (internal quotation omitted).

While some documents related to the Sale Properties have been produced, the discovery that has been discussed repeatedly in status hearings before this court relates to the discovery of assets owned by the Easterdays other than the Sale Properties. There have been at least 16 rounds of production primarily focused on assets currently held by the Easterdays. That discovery includes Mrs. Easterday’s home place, unimproved ranch land in Idaho, a small condominium in Hawaii, bank accounts, brokerage accounts, leases on non-Sale Properties, appraisals of non-Sale Properties, tax statements on non-Sale Properties, plat maps of non-Sale Properties, detailed personal property listings, documents related to Easterday

NOTICE AND MOTION FOR RECONSIDERATION - 5

1 Farms Produce, Co. and 3E Properties Partnership, and other items unrelated to the
2 Adversary Proceeding. These productions are ongoing and have already taken
3 months and caused the Easterdays to incur significant time and expense in
4 complying. However, these requests have not been focused on the Sale Properties.
5 In fact, prior to discovery issued today, no discovery has been conducted yet by the
6 Easterdays with respect to the Adversary Proceeding issues.

7 As for the Adversary Proceeding, not only will discovery as to third parties
8 and Debtors' records need to take place, it has become apparent that Debtors hold
9 some of the Easterdays' personal records for which the Easterdays have been
10 searching. These are documents that should have remained in the Easterdays'
11 possession but were seized by Debtors when they took control of the companies.
12 The Easterdays need to regain access to their own records to prepare a proper
13 defense. In summary, it is not accurate that extensive discovery has already been
14 completed in the Adversary Proceeding. Rather, we are starting at zero, at least as
15 far as the Easterdays are concerned. Such error should be corrected to avoid a
16 manifest injustice to Mrs. Easterday.

17 B. The Scheduling Order Violates the Due Process Clause of the United
18 States Constitution

19 The Fifth Amendment of the United States Constitution guarantees that an
20 individual will not be deprived "of life, liberty, or property without due process of
21 law." U.S. Const. amend. V. *See also Butner v. United States*, 440 U.S. 48, 55
22 ("Property interests are created and defined by state law. Unless some federal
23 interest requires a different result, there is no reason why such interests should be
24 analyzed differently simply because an interested party is involved in a bankruptcy
25 proceeding."); *In re Drexel Burnham Lambert Grp. Inc.*, 995 F.2d 1138, 1144 (2d
26 Cir. 1993) ("no person may be deprived of life, liberty or property by an

NOTICE AND MOTION FOR RECONSIDERATION - 6

1 adjudicatory process without first being afforded notice and a full opportunity to
2 appear and be heard, appropriate to the nature of a given case.”).

3 The rights implicated here are fundamental protections afforded to
4 Mrs. Easterday by the Fifth Amendment. In the Complaint, Debtors seek to have
5 tens of millions of dollars of Mrs. Easterday’s property taken away from her
6 without any consideration in return (notwithstanding Mrs. Easterday’s repeatedly
7 offering to contribute the property to pay creditors in exchange for reasonable
8 consideration). Debtors seek to strip from her the fruits of a lifetime of her and her
9 late husband’s work and generations of family farmers prior to them. To do that
10 on an expedited basis would deprive Mrs. Easterday of her constitutional rights.

11 The deadlines set forth in the Scheduling Order are patently unreasonable
12 given the present state of the litigation. For example, the close of written
13 discovery is January 7, 2022, which is only 30 days after Plaintiffs’ deadline to file
14 an amended complaint or answer the counterclaim. Allowing only 30 days for
15 written discovery in a case of this magnitude is insufficient, especially given that it
16 comes in December, when a number of counsel and staff will be unavailable
17 during the holidays. Having a deadline to complete all document production by
18 February 4, 2022, and depositions by February 25, 2022, is likewise unreasonable.
19 This dispute involves over \$200 million in assets that need to have their extensive
20 history, going back decades, reviewed and analyzed. It further requires the
21 identification and participation of a myriad of third parties who have dealt with the
22 Easterdays and the Sale Properties over the decades. Such information cannot be
23 fairly obtained in the timeframe allowed by the Scheduling Order. In addition,
24 there are not only the fact and legal issues involving the ownership of numerous
25 parcels in dispute, but then there are the separate issues with respect to ownership
26 of the water rights and improvements. On top of all that are the issues of valuation

NOTICE AND MOTION FOR RECONSIDERATION - 7

1 and apportionment of the Sale Proceeds among those various parties and property
2 interest holders. This is not a simple dispute that can be resolved quickly.

3 Debtors themselves have stated how complicated this process will be at
4 numerous prior court hearings. At the hearing on April 14, 2021, Mr. Pachulski
5 stated that “this is about as complicated a transaction as I've seen in my
6 career * * *. There are parcels that are owned by individuals, there are parcels that
7 are owned by individuals and one of the debtors. One of the properties I looked at,
8 I don't recall, your honor, if it was River Farms, had at least 77 parcels, and every
9 one of them had a different ownership structure. So, as I stated, this is really an
10 incredible process that we now have to go through” [main case doc. no. 580,
11 minutes 12:11, 13:53-14:18]. As to the water rights issues, he stated “there are
12 some really complicated water rights issues. Our firm wouldn't even touch that.”
13 *Id.* at minutes 20:05-20:10. On April 28, 2021, Mr. Pachulski pointed out that
14 “what makes this case really complicated, Your Honor, is it's not just a matter of,
15 you know, whether Farms gets money or whether Ranches gets money, but you
16 have the Easterdays, who are general partners of the Easterday Farms Partnership,
17 which creates a whole set of complex issues” [main case doc. no. 650, minutes
18 37:18-37:38].

19 Another important issue to consider with respect to timing of the Adversary
20 Proceeding is that, at the inception of the bankruptcy proceedings, there was no
21 dispute about the fact that the Easterdays owned certain property. The ownership
22 dispute now in the Adversary Proceeding was only recently created by Debtors.
23 As Mr. Pachulski stated at the March 3, 2021 hearing, “There are a lot of claims in
24 this case, there are assets held by non-debtors, some of which have really no
25 obligation to these estates or limited obligations” [main case doc. no. 257, minutes
26 45:08-45:20]. He then went on to detail the properties and identified the

NOTICE AND MOTION FOR RECONSIDERATION - 8

1 Easterdays as the owners of certain properties stating, “One is a property called
2 Goose Gap. Goose Gap is, the property itself, is exclusively owned by the
3 Easterday family * * *. The second property is called River Farms. River Farms,
4 again, is primarily owned by the family, by members of the family * * *” [main
5 case doc. no. 257, minutes 13:12-13:22, 14:15-14:25].

6 The issue of whether these are binding admissions will be left for another
7 day in the litigation; they are only mentioned here to show that the ownership
8 dispute has not been an issue known to all parties since the inception of the case. It
9 is an issue that arose later in the case, and the Easterdays are entitled to sufficient
10 time to prepare a proper analysis of the issues and a fair opportunity to present
11 their position to the court. It should also be kept in mind that the Easterdays do not
12 have unlimited resources and teams of professionals and advisors being paid by the
13 bankruptcy estate with nothing to do other than litigate. Rather, the Easterdays are
14 individuals working with limited resources and limited time while still trying to
15 earn a living. There is no harm or prejudice to the bankruptcy estates to have the
16 Adversary Proceeding resolved on a reasonable schedule. By contrast, there is
17 great harm and prejudice to the Easterdays in rushing this proceeding.

18 The Easterdays entered into the Cooperation Agreement earlier in the case as
19 a means to maximize value and streamline disputes by seeking resolution of them
20 outside of time consuming and expensive litigation. Unfortunately, Debtors
21 breached that agreement and have not engaged in any negotiations with the
22 Easterdays over an allocation protocol. Instead, they skipped that step and seek to
23 fast track litigation. Such conduct is a direct violation of the intent and spirit of the
24 Cooperation Agreement. In any event, in agreeing to a process that would
25 streamline the resolution of any disputes, the Easterdays did not agree to a fast-
26 tracked trial that would deprive them of a fair day in court. Mrs. Easterday is

NOTICE AND MOTION FOR RECONSIDERATION - 9

1 entitled to the full protections of the United States Constitution to protect her rights
2 and interests. The Scheduling Order must be revised to allow for such protections.

3 CONCLUSION

4 The ownership and value of the Sale Properties are at the heart of this
5 bankruptcy case, as is clear from Debtors' proposed plan and disclosure statement.
6 There are numerous parcels of property at issue that need to be determined as to
7 ownership among Ranches, Farms, and the Easterdays not only as to property
8 ownership but also as to water rights and improvements. On top of that, the same
9 parcels then need to be analyzed as to their respective real estate values and in
10 relation to the value of water rights and improvements.

11 This is not a simple case and there has not been extensive discovery to date
12 on these issues. Given the importance of these issues to Mrs. Easterday and
13 Debtors, a determination should not be decided on an unnecessarily expedited
14 basis and without providing the parties with the opportunity to conduct essential
15 discovery and have a fair trial. To allow the Scheduling Order to remain in place
16 would be manifestly unjust and deprive Mrs. Easterday of her due process rights.

17 For the foregoing reasons, the court should grant Mrs. Easterday's motion
18 for reconsideration and enter a scheduling order that allows for additional time for
19 the parties to prepare for and try this case.

20 Dated: December 14, 2021.

21 TONKON TORP LLP

22 By /s/ Timothy J. Conway

23 Timothy J. Conway, WSBA 52204
24 Attorneys for Karen L. Easterday,
25 individually and as personal
26 representative of the Estate of Gale A.
Easterday

042047\02001\13046070v4

NOTICE AND MOTION FOR RECONSIDERATION - 10